FEDERAL REGISTER

VOLUME 4 NUMBER 221

Washington, Wednesday, November 15, 1939

Rules, Regulations, Orders

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

ADOPTION OF RULES X–17A–3 AND X–17A–4

The Securities and Exchange Commission, deeming it necessary for the exercise of the functions vested in it and necessary and appropriate in the public interest and for the protection of investors so to do, pursuant to authority conferred upon it by the Securities Exchange Act of 1934, as amended, particularly Sections 17 (a) and 23 (a) thereof, hereby adopts the following rules:

§ 240.X–17A–3 (*Rule X–17A–3*). *Records to be made by certain exchange members, brokers and dealers.* (a) Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934 [C. 404, sec. 15, 48 Stat. 895; C. 462, sec. 3, 49 Stat. 1377; C. 677, sec. 1, 52 Stat. 1070; 15 U.S.C., 780, Sup. III and 15 U.S.C., 780–3], as amended, shall make and keep current the following books and records relating to his business:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(2) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such member, broker or dealer and partners thereof, all purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such account.

(4) Ledgers (or other records) reflecting the following:

(A) securities in transfer;

(B) dividends and interest received;

(C) securities borrowed and securities loaned;

(D) monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral);

(E) securities failed to receive and failed to deliver.

(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such member, broker or dealer for his account or for the account of his customers or partners and showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried.

(6) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such member, broker or dealer, or any employee thereof, shall be so designated. The term "instruction" shall be deemed to include instructions between partners and employees of a member, broker or dealer. The term "time of entry" shall

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FEDERAL REGISTER

Published by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. L. 500), under regulations prescribed by the Administrative Committee, with the approval of the President.

The Administrative Committee consists of the Archivist or Acting Archivist, an officer of the Department of Justice designated by the Attorney General, and the Public Printer or Acting Public Printer.

The daily issue of the FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1 per month or $10 per year; single copies 10 cents each; payable in advance. Remit by money order payable to Superintendent of Documents, Government Printing Office, Washington, D. C.

Correspondence concerning the publication of the FEDERAL REGISTER should be addressed to the Director, Division of the Federal Register, The National Archives, Washington, D. C.

be deemed to mean the time when such member, broker or dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received.

(7) A memorandum of each purchase and sale of securities for the account of such member, broker or dealer showing the price and, to the extent feasible, the time of execution.

(8) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer.

(9) A record in respect of each cash and margin account with such member, broker or dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

(10) A record of all puts, calls, spreads, straddles and other options in which such member, broker or dealer has any direct or indirect interest or which such member, broker or dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved.

(b) This rule shall not be deemed to require a member of a national securities exchange to make or keep such records of transactions cleared for such member by another member as are customarily made and kept by the clearing member.

(C. 404, sec. 17, 48 Stat. 897; C. 462, sec. 4, 49 Stat. 1379; 15 U.S.C., 78q and Sup. III; C. 404, sec. 23, 48 Stat. 901; C. 462, sec. 8, 49 Stat. 1379; 15 U.S.C., 78w and Sup. III) [Rules and Regs., Rule X–17A–3, effective January 2, 1940]

§ 240.X–17A–4 (*Rule X–17A–4*). *Records to be preserved by certain exchange members, brokers and dealers.* (a) Every member, broker and dealer subject to Rule X–17A–3 [Sec. 240.X–17A–3] shall preserve for a period of not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to paragraphs 1, 2, 3, and 5 of Rule X–17A–3 [Sec. 240.X–17A–3]

(b) Every such member, broker and dealer shall preserve for a period of not less than three years, the first two years in an easily accessible place:

(1) All records required to be made pursuant to paragraphs 4, 6, 7, 8, 9 and 10 of Rule X–17A–3 [Sec. 240.X–17A–3].

(2) All check books, bank statements, cancelled checks and cash reconciliations.

(3) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such member, broker or dealer, as such.

(4) Originals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to his business as such.

(5) All trial balances, financial statements, branch office reconciliations and internal audit working papers, relating to the business of such member, broker or dealer, as such.

(6) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(7) All written agreements (or copies thereof) entered into by such member, broker or dealer relating to his business as such, including agreements with respect to any account.

(c) Every such member, broker and dealer shall preserve for a period of not less than six years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of such account.

(d) Every such member, broker and dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books.

(e) After a record or other document has been preserved for two years, a photograph thereof on film may be substituted therefor for the balance of the required time.

(C. 404, sec. 17, 48 Stat. 897; C. 462, sec. 4, 49 Stat. 1379; 15 U.S.C., 78q and Sup. III; C. 404, sec. 23, 48 Stat. 901; C. 462, sec. 8, 49 Stat. 1379; 15 U.S.C., 78w and Sup. III) [Rules and Regs. Rule X–17A–4, effective January 2, 1940]

The foregoing rules shall be effective on January 2, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39–4212; Filed, November 13, 1939; 4:19 p. m.]

TITLE 24—HOUSING CREDIT

UNITED STATES HOUSING AUTHORITY

PART 639—SITE SELECTION*†

Sec.

§ 639.0 *Scope and content.* After a local housing authority has obtained an earmarking of funds, but before a formal application for financial assistance can be considered, the local authority must have selected a site or sites for its housing project. This Part 639 discusses the problems encountered in site selection and takes into consideration site selection in its relationship to city planning, sectional distribution of housing projects within the city, racial considerations, alternative site possibilities, comparison costs and items to be considered in selecting the site.*† [Introduction]

§ 639.1 *Site selection in its relationship to city planning.* The problem of site selection should be approached with a full realization of the importance of the relationship of the low-rental housing program to city planning, city building and city rebuilding in the locality concerned. Where such a program is being undertaken with the financial cooperation of the USHA, it must immediately assume more of a long-term aspect than can possibly be assured for the usual type of residential community development. This is apparent because of the policies of the USHA. These policies require that the planning and design of housing projects to which it gives financial assistance shall be such that their useful life shall be at least the term of its loan, which is usually not less than 60 years, with the prospect of a much longer life; and that maintenance including provision for replacements, shall be such that living conditions on the site, insofar as they may be affected by the physical state of the property itself, shall remain unimpaired during this entire period. Permanency as to character is

*Sections 639.0 to 639.6 issued under the authority contained in Sec. 8, 50 Stat. 891; 42 U.S.C., Sup. IV, 1408.

†The source of Sections 639.0 to 639.6 is Bulletin No. 18, February 13, 1939.

necessarily an idea inherent in any housing plans based upon these policies. In the development of American cities in the past, permanency of character for residential areas has not often been attained. The people who, acting individually, have been responsible for the piecemeal and haphazard building of urban residential areas, have either not given sufficient thought to the idea of permanency of character or have naively invested their money, their efforts and their hopes in the belief that such permanency was assured. There have been expedients applied in the hope of insuring stability of character for at least a reasonably long period for specific residential areas. But they have not been effective in forestalling the apparently inevitable change, which in the vast majority of cases takes the final form of complete deterioration. And the end products of this deterioration are the slums. Among such expedients are deed restrictions of various kinds; but the protection from these is at best transitory and they cannot prevent the creeping mutations in the character of the surrounding community which follow in the footsteps of the passing years. Likewise, the latter-day instrumentality of zoning, essential as it is as a method of protection and stability, cannot be relied upon to hold back, by itself, these inevitable changes. How, then, may there be for a new housing project assurance as to a continuingly satisfactory environment and a proper position in the city structure? There is no infallible formula for the attainment of these ends. But this question leads logically to the main theme of this part of the discussion, which is the essential inseparability of housing planning from city planning. The sad picture of decay and disintegration which almost every city presents should be enough to prove the fact of this inseparability. But the long-term provisions under which housing projects are built with the aid of USHA funds make mandatory the application of this principle. As has been indicated above, the long-term character of housing projects sponsored by the USHA is to be insured, insofar as the property within the boundaries of the project is concerned, through the design and maintenance policies to be followed. But this internal protection must be supplemented by the protection of initial appropriateness of the position of the site within the city structure. The city planning aspect of site location for low-rental housing (and, in fact, for residential development of any type) is double-edged in its implications: first, there is the effect of the location within the city plan upon the future of the housing project; second, the effect of the project's location upon the city plan. The latter is as important as the former—from the standpoint of the broader interests of the city, perhaps more important. City planning implies the visualization of a pattern for the city's structural and functional elements. Among these elements are the system of major highways, the supplementary system of secondary and of local streets; the areas of specialized land use, including areas allotted to industry, commerce, and residence; the system of local passenger transportation facilities, including street car and rapid transit lines, stations for suburban commuters, and existing or possible bus routes; the railroads and railroad facilities, including passenger stations, freight stations, switching yards, repair shops, and the like; the parks and parkways; the cemeteries; the public and parochial schools; the universities and institutions of higher education; the civic and governmental centers; the permanent stadiums, ball parks, athletic fields, race tracks, and fairgrounds; the playgrounds, swimming pools, and minor recreational system; the libraries; the hospitals, medical centers, and correctional institutions; the waterfront facilities; the airports; the major system of utility mains and utility plants, including water supply, gas works, and sanitary sewage disposal; the permanent plant for such municipal services as garbage and refuse disposal and fire protection. These are the elements which form the complex physical structure of a city. The pattern as a whole must necessarily change as time goes on; no American city has reached a static condition in its physical development. But the uncontrolled and unguided changes to which our cities have been subject in the past have left a trail of heart-breaking economic and aesthetic loss; and the resulting burden of inconvenience and economic hardship must be borne not only by the present generation but by generations to come. It is the object of city planning to reduce to a minimum this loss and burden through a rational guidance and control of these inevitable changes in the community's structure. It is obvious that the housing program must be properly fitted into this city pattern, both existing and as projected into the future. Its relationship to all of these constituent elements must be considered. Among the items of most vital importance to housing projects for low-income families, however, is assurance of the continuance of ample opportunities for employment within reasonable distances. The relationship of the site, not only to industrial areas and other fields of employment, but also to the transportation system is therefore very important. The local authority should take into account any trends affecting employment opportunities such, for example, as the tendency of industries to move to the suburbs along certain favored lines of transportation. Reference will be made in other sections of this Part to numerous other items which should be considered during the process of site selection; some of these are inherently associated with city planning. The local authority then, with a full realization of the importance of the relationship between the task with which it is charged and the broader phases of city planning and regional planning, is confronted with the problem of bringing into play such planning instrumentalities as may be available. If there is an active and technically competent city planning commission, so much the better. Its advice and, if possible, its services should be enlisted. But the local authority, must itself do sufficient city planning to insure the proper integration of its program with the city structure, particularly if the local planning body is not active or technically competent. In such case, it will do well to stimulate the interest of the local planning body and to encourage it to improve its technical competence. Where no planning agency whatever exists in the community, there is a wonderful opportunity for a group so strategically placed as a local authority to take the lead in bringing into being an effective movement to establish city and regional planning as an active and permanent force in its locality. Because of the fact that housing and city planning are so closely inter-related, such promotional activity is certainly a legitimate interest of a local authority. If there is an active city or county planning commission, the local authority should endeavor to obtain from it definite and official approval for its selection of sites. The timing of the announcement of such approval may be subject, sometimes, to the question of expediency as to when the selection should be made public. Even in communities where the local planning body is not active, or where there is doubt as to its technical competency, the local authority will strengthen its position and lessen the danger of future attack upon its choice of sites by bringing the official planning agency into its deliberations. In the city planning aspects of its work, as well as in all other aspects, whether technical, legal, social, economic or financial, the advice and services of the USHA are available to the local authority to the extent to which it may wish to make use of them.

(a) *Zoning.* An adjunct and instrumentality of city planning is zoning. As has been indicated above, the mere zoning of the project or its immediate neighborhood, without relation to the more permanent elements of city planning and without integration with a broad plan of city-wide zoning, can be by itself little more than a temporary protection. Even so, such zoning protection as may be available is necessary for each housing project. The protection of the site through proper zoning should be considered one of the essentials. Not only should the surrounding areas be so zoned as to insure continued protection for the project, but the site itself must be appropriately zoned for the type of structures which are to be built upon it. Where there is not an adequate plan of zoning in the community, adequately en-

forced, there is the opportunity for the local authority, as in the field of city planning discussed above, to take the leadership in promoting an effective zoning program by sponsoring a comprehensive zoning ordinance. Rezoning of adjacent areas for the protection of the project is frequently a requirement written into the contract under which the USHA extends financial assistance to the local authority. Rezoning is sometimes difficult to bring about, as is also the elimination of objectionable nonconforming uses under existing zoning. The matter of zoning technique and zoning procedure, including the legal problems involved in the establishment of zoning, is frequently outside of the experience of the local authority. A separate Part of this series will deal with this subject. On all matters related to zoning protection for housing projects there is available to the local authorities the advice of the special city planning consultants of the USHA, as well as of its legal and project planning advisers.

(b) *Preliminary determination of minimum size of site required.* Before beginning its search for a site the local authority should have determined, at least in a general way, the principal characteristics and the approximate size and racial composition of the market for the type of housing which it is proposed to build, and from this information a tentative determination should have been made of the number of residence units which are to be constructed. The services of the USHA advisers, and particularly of its Research Division, are available in this essential preliminary investigation. If the conditions in a given locality call for special consideration of major racial elements in the market and if the needs, customs and preferences of racial groups should properly enter into the question of site selection and occupancy assignment, it would be well to have, at this point, a fairly well-defined idea as to the distribution of the total number of units to be built among the racial groups which are to be served. Racial policy in its relationship to site selection is discussed in section 639.3 of this Part. Although the number of units to be built will influence the question of the amount of ground which must be obtained and will establish a minimum limit to the size of the buildable area of the site, this factor will not necessarily fix the maximum size of the site. The advisability in a given case of obtaining presently land for future enlargement of the project will be influenced by the availability and the cheapness of additional suitable land. In certain cases the purchase of more land than may ever be needed for the housing project itself may be desirable for purposes of protection to the project, provided that the cost is not too great. There are many cases, particularly in the more congested cities, where there is no single site available at a reasonable cost which is large enough, without overcrowding, for the number of units which it may be desired to build on a single site in the city as a whole or in an approximately defined section of the city. In such cases study should be given to the possibility of dividing the desired number of units among more than one site, and sites which fulfill the requirements of the project in respects other than size should be sought; but the reduced number of units to be built on any site must not be below the minimum necessary for operating efficiency.

(c) *Size of site in relation to site density.* Although the foregoing discussion of the influence of the number of units on the size of the site suggests an aspect of the site selection problem which the local authority should have in mind when it begins the search for sites, actual experience shows that among projects which have been approved by the USHA there has been the widest variation in the relationship of the size of site to the number of units. The average condition as to density for a group of 72 of the sites which have been approved is 21 units per net acre. (Net acreage is the area of the developed portion of the site after public thoroughfares have been deducted.) Certain projects with exceptionally high densities, such as those in New York City and Boston, are not included in this group. The range of density in this group of 72 sites is from 39.8 to 5.4 units per net acre. The median figure for this group is 19.7 units per net acre. The principal significance of these figures is that they show the wide range of density and indicate that there can be no rule of thumb whereby the size of the site required for a given number of units can be figured with satisfactory exactitude. The existence of this wide range shows that a large degree of individuality has been used in site planning and the provision of open spaces, recreation areas, and types of dwelling and non-dwelling buildings. The density will be influenced materially by the type of structures which are built. During the development of the plans, but not necessarily at the time of site selection, there must be a decision as to the dwelling types or combination of types. These types may be apartment buildings, either of the walk-up kind or of the multi-story elevator kind, one-story or two-story row houses, flats, "twin" houses, or single detached houses. It is obvious that site density which may be appropriate for one type of housing may not be appropriate for some other type. The fundamental consideration is that density must not be so great as to jeopardize the admittance of sunlight and air, privacy, and other amenities of living for the tenants, or as to be inconsistent with the characteristics of the community and the neighborhood in which the project is located. In considering site density and the most desirable types of buildings, the objective of the USHA-Aided program, namely, the building of housing for the lowest income groups, should always be kept in mind. Enthusiasm for the ideal must be restrained and solutions adopted which, while fulfilling the requirements of good housing for the lowest income groups, are nevertheless within the limits imposed by the necessity of careful economy both in first cost and in subsequent operating cost. Under ordinary conditions a decrease in density will increase the cost per unit for land, utilities and site improvements, and, in most cases, the cost of operation thereafter. This is one of the considerations which has caused the widespread adoption of the row house plan of development, frequently in cases where it was the original desire of the local authority to fulfill the ideal of the detached house on an individual lot. Although the economic factors of site density must be carefully considered, there are other factors for the influencing of density and the type of buildings which must not be neglected. Among these are the geographical location of the city, which influence its climate and the habitation customs of its inhabitants, the size of the city, and the location of the site in the city in its relationship to existing densities or densities which may be contemplated by an established city plan or zoning plan. The details of the site plan will finally determine the density. The principles of site planning are discussed in Part 635. In the matter of appropriate densities, as in other problems of the local housing program, the advice of the local city planning body should be sought at the very beginning of the search for possible sites.*† [Par. I]

§ 639.2 *Sectional distribution of housing projects within the city.* In many cases the total market as determined for the community as a whole should not be the sole basis for the determination of the number of units for which a site must be selected. Sectional influences within the community may tend to prevent freedom of movement of families from one part of the community to another. The total market may be divided into geographic segments between which there may be but little hope of interchange of families. Such sectionalization of the market may result from the existence of various employment concentration points, together with transportation difficulties and distance or topographic barriers; or from a determined preference of special groups, racial or otherwise, for certain sections of the community in which they have long been established. The question of site selection, as affected by the number of units to be built, should therefore be studied in its relationship to the geographical distribution of the total market, insofar as such distribution may be considered as being set in a somewhat permanent pattern.*† [Par. II]

§ 639.3 *Racial considerations in site selection.* The second prerequisite assumption with which the local authority should begin its search for a site is that concerning the racial distribution

of the total number of families to be served—that is, if the local authority has decided that local conditions indicate that there should be any distribution along racial lines. This subject has been mentioned briefly above. Where it has been decided that a project should be built to serve families who are predominantly of a given race, care must be exercised in selecting a site which will not do violence to the preferences and established habits of members of that race or to the community life of which they may be a part. The aim of the local authority should be the preservation rather than the disruption of community social structures which best fit the desires of the groups concerned. Particular care should be exercised in site selection to safeguard the interests of minority groups which may be affected. Although it is the responsibility of the local housing authority to decide its own racial policy, certain desirable principles may be suggested for application in this connection. Some of these may be enumerated as follows:

(a) The development of public housing projects for white occupancy in areas now occupied by Negroes or other minority racial groups is undesirable. This is particularly true where a considerable amount of home ownership or existing community facilities indicate that an integrated community of Negro, Latin American, or other minority composition is established.

(b) Whenever exceptions are to be made to this general policy, the local authority should demonstrate the circumstances which it believes justify the exception and there should be obtained, if possible, a statement of concurrence in the program from representative spokesmen of the racial group to be displaced.

(c) Any local program which involves the demolition of a number of houses available to minority racial groups which is considerably greater than the total to be provided for these groups in the new project is undesirable. In many sections of the country the supply of housing available to minority groups—Latin Americans and Negroes particularly—is artificially limited by racial restrictions. If houses in which these groups are now living are demolished, houses in other sections of the city evacuated by tenants moving into the new projects are seldom available to these displaced minority groups. In the case of home owners of the minority groups there will generally be great difficulty in acquiring comparable homes elsewhere in the city.

(d) If it is decided to develop sites which are either inhabited now by members of more than one race or, in the case of vacant sites, are contiguous to neighborhoods which are inhabited by different races, local authorities should plan projects open to the members of these different groups.*† [Par. III]

§ 639.4 *Study of alternative site possibilities.* Having arrived at a fairly well-defined decision as to the number of units for which a site or sites must be found and bearing in mind the racial implications of the problem, as discussed above, if any should exist, the local authority will do well to examine the possibilities and the suitability of as many different sites as may have a reasonable claim to attention and, by a process of elimination, to narrow its examination to a few which appear to be worthy of a more intensive study. The practice, which occasionally is followed by a local authority, of jumping to a conclusion in the selection of a site without having thoroughly explored the possibility of there being a superior alternative, is to be condemned. It is strongly recommended that a tabulation be prepared to show side by side the characteristics of the various sites which are worthy of consideration. Frequently a site which may receive little attention as a possibility at first will appear in a more favorable light after a detailed comparison with other possible sites. It is to be remembered that in making such comparisons, as elsewhere in the development of the local authority's program, the services of the legal and project planning advisers and of other specialists of the USHA are available. In the following pages some of the additional factors which should be considered in connection with site selection will be discussed. The check list which is included hereafter in section 639.6 may be used as a basis for rating alternative site possibilities.

(a) *Vacant or slum sites.* Although the objectives of the U. S. Housing Act of 1937 include slum clearance as well as the building of homes for the lowest income groups, it will be well for the local authority to begin its site selection study without a predetermined decision as between a slum-site program and the use of vacant or partly vacant land. The availability of properly placed sites of each type should be explored and the comparative advantages, economic and otherwise, of each type should be examined. A slum clearance site which may in other respects seem very desirable may, upon investigation, prove to be too expensive to acquire; or the problem of relocating present residents may present serious difficulties. A further analysis of the racial situation may show unexpected complications. As slum sites are generally held by a large number of individual owners, the difficulty of acquisition or the danger of delay may, upon investigation, appear to be serious. Above all, a check of land uses, both existing and trends, in the vicinity of the site under consideration, either with the assistance of the City Planning Commission (if there is one), or as undertaken by the local authority, may show that the site is better suited to other than residential uses or that it is definitely unsuitable for continued use as a residential neighborhood. On the other hand, a vacant site may at first arouse enthusiasm because of its cheapness or its ease of acquisition, or because of its excellent topography or beautiful surroundings. But a more careful examination may show that a vacant site should not be selected because:

(1) The vacant site is not properly located with respect to employment opportunities for the low-income families which would be the tenants;

(2) School facilities or transit facilities are inadequate and the prospect of such lack being corrected is remote;

(3) Utilities are lacking and cannot be extended to the site without considerable expense to the project or to the city;

(4) The location of the vacant site within the city structure is such that it should logically be put to other than residential use, such as industry or perhaps a public park; or

(5) The vacant site is more suitable for residential development by private industry for a higher income group. The considerations specified in subparagraphs (a) (1) through (a) (5) illustrate some of the considerations which should enter into a valuation of the proposed site. They are cited here in order to emphasize the desirability of making a careful comparative analysis of the merits of a number of sites, before any offhand decision is made either as to a particular site or as between a slum-site and a vacant land program. Where the relocation problem would be serious under a slum-site program, and particularly in communities where it may be expected that more than one project will be built, either presently or within the near future, it may be advisable to choose a vacant land site for the first development. If the slum clearance part of the program is deferred until the new housing on the first project is available or nearly available, the relocation difficulties will be alleviated.

(b) *Natural boundaries of the site.* It is well to bear in mind the fact that it is desirable, other things being equal, that a site have natural boundaries, at least on a portion of its periphery. This is both in the interest of the protection of the project and in the interest of a logical future extension of the housing or slum clearance program. Such natural boundary may be a park, a cemetery, the grounds of a large public institution, a river or stream, a ravine or a bluff, a railroad, an important street or highway, or a well-defined boundary of a commercial or light industrial area. In a slum district or blighted area a first project will seldom clean up all of the blight. It is therefore sensible to locate such projects in a position from which it can be readily expanded step by step. Should the project be set down in the middle of a slum area which may be considered as appropriate for future reclamation and residential use, the chances of spotty industrial and commercial encroachment are increased. If, on the other hand, the reclamation program

should begin with a site adjacent to a natural boundary of this area, the danger of such uncontrolled spotty development would be lessened. There are, of course, various considerations, including that of cost, which may make it necessary to select a first site without regard to this question of natural boundaries. In such cases it would be well to locate the site so that it may eventually be expanded outwardly to reach some natural boundary. This is especially true for slum clearance sites, but it may sometimes be equally true for a site in open territory. In the case of a site in open territory it is well to remember that population density on the first site should not be established at such a high level that it will tend to make more difficult the later acquisition of the adjacent land. A somewhat different but related matter is the situation where certain street frontage is too expensive for use for low-rental housing but may to advantage be acquired and leased to private developers for commercial or other uses as a measure of protection to the project, in order to eliminate a "business slum" along its border, or in order to provide for street widening, or in order to insure desired points of access to the project. The introduction of this subject is not to be interpreted as establishing any general policy of the USHA under which the acquisition of land for commercial purposes is authorized. Any such plan must be justified by the special circumstances peculiar to a given project. But it is mentioned here because it may, in certain cases, have a bearing on the question of site boundaries.

(c) *Exclusion of through streets from the projects.* If possible a site should be selected which will permit the exclusion of through traffic from streets within the project. The optimum condition is where there are no streets within the project except those which are necessary for the services of the project itself. It will also be in the interest of safety for children and of quietness if there are no streets which carry heavy traffic on its boundaries. It is especially desirable that the site should not be split by a major traffic artery. It is true, of course, that in some cases other circumstances affecting site selection make the avoidance of this condition impossible. In general, the objections to the inclusion of a major thoroughfare decrease as the size of the project increases. The closing of even minor streets which may be so located as to encourage the through movement of traffic is also most desirable. This possibility is sometimes complicated by the existence of utilities under the streets which should not be moved. Even so, it is often possible to close the streets and arrange the position of buildings so that the utility lines are left under the project open spaces. The attitude of the city government and the city planning commission on desirable street closing should be determined before a decision on site selection is made.*† [Par. IV]

§ 639.5 *Comparison of costs*—(a) *Comparison of costs of street construction and utilities for various sites.* Land values are obviously governed to some degree by the extent of public improvements already built and for which the property owners have been assessed. In comparing prospective sites, it will frequently be desirable to make comparative estimates on the probable cost to the project of street construction or reconstruction and of utility installation. For comparative purposes, such costs must be added to the cost of the land. For example, it may be found that for a vacant tract the cost of land plus the cost of site improvement items such as street paving, storm and sanitary sewer mains, and water and gas mains, will be more per acre than for a slum-clearance site where such improvements are, for the most part, already built and in usable condition. Approximate, comparative estimates can be prepared readily and will present the facts in a concrete manner. The figures should obviously not include work which it may be safely assumed will be donated by the municipality. The cost of service roads, utility services, and the like within the project property will generally be much the same for sites of comparable size and therefore may not be particularly significant for the purpose of site comparison. Such evaluations may be extended to cover differences in costs resulting from varying physiographic conditions, if these differences are significant; for example, excess grading and foundation costs of one site as compared with another.

(b) *Transportation costs.* In considering housing for the lowest income groups only, the effect of site selection on the cost of transportation for the tenants is of great importance. Added transportation costs are virtually equivalent to added rents. The USHA is to pay subsidies in connection with these projects over a long term of years in order to reduce rents. It would therefore be illogical to select a site on the merits only of its lower first cost if its location is such that the additional transportation cost to the tenants would in part nullify the advantages of the subsidy. Sometimes there may be an approximate theoretical economic balance between the additional first cost of one site as compared with the additional continuing transportation expense which the selection of another site would impose upon the tenants. Even so, there should be compelling reasons other than first cost for the choosing of the cheaper of two sites if the resulting transportation cost to the tenants is materially increased thereby. Even where there is a theoretical balance of the economic factors it should be remembered that the policies controlling the USHA-Aided program call for greater consideration being given to the continuing expenses of the tenant than to the first costs of the project. Consideration should be given to the possibility, however, that a present unfavorable transportation cost condition will tend to change for the better. For example, an outlying site may be justified if it is thought that within a reasonable time industry will move either near to it or beyond it and thus place it in a more favorable position as to transportation to a large field of employment. In comparing the merits of sites from the standpoint of transportation costs, due consideration may be given to the probability that a certain percentage of the tenants will use automobiles, either individually or in a cooperative way, as their regular means of transportation. This percentage will vary in different parts of the country. There are cities where a large proportion of even the poorest families manage to own some kind of automobile. The future trend in this matter cannot be predicted.*† [Par. V]

§ 639.6 *Check list of items to be considered in site selection.* In the preceding sections of this Part there have been discussed some of the factors which the local authority should have in mind when it approaches the problem of site selection, including some of the fundamentals of that problem. In the following list are various points which should be considered in the comparative analysis of the sites which are being investigated. The order in which they appear is not to be taken as being indicative of their relative importance. This list is not necessarily all-inclusive, since under local circumstances there may be items not mentioned here which should have an important influence upon site selection. It is suggested that in rating sites the following items be considered:

(a) *Present and future land uses in the neighborhood and in the city as a whole.* (Present neighboring land uses; present zoning; discernible changes in land use; harmful land uses; zoning changes to protect project; suitability of neighborhood for type of structure to be built.)

(b) *Population factors.* (Suitability of site from racial standpoint; population density; population trends in the city as a whole.)

(c) *Accessibility to employment.* (Accessibility of site to centers of employment either by walkable routes or by transportation facilities; adequacy of employment opportunities to which site is easily accessible; stability or seasonal character of the employment to which site is considered accessible.)

(d) *Transportation facilities.* (Transportation facilities within reasonable distance from site which can furnish satisfactory service to tenants; prospects for establishing transportation facilities where necessary; costs to tenants of necessary transportation service.)

(e) *School facilities.* (Distance by walkable routes or by transportation

routes to grade schools, junior high schools, high schools and parochial schools; capacity of appropriately located schools to absorb the children of the project; where conveniently located schools do not exist, the prospects as to the building or enlargement of schools or through the provision of transportation to existing schools.)

(f) *Recreational and social facilities.* (Accessibility to existing parks, prospect as to future public recreational facilities to be available to the tenants; accessibility to religious and social facilities; necessity for the construction of supplementary recreational and social facilities as a part of the project.)

(g) *Accessibility to stores and other commercial services.* (Accessibility of site to existing commercial centers; need for provision of commercial facilities on the site as a part of the project development.)

(h) *Topography and physiographic features of the site.* (Topography of the site as it affects the percentage of buildable area and the possibility of an acceptable site plan; topography of site as it affects cost of building construction and site improvements; topography of site as it affects vehicular and pedestrian access to the project; grading requirements in general; rock excavation to be encountered in grading or in building construction; underground conditions; protective measures against flood; ground water conditions as they may affect cellar dampness or foundation stability; character of the ground as it affects its bearing capacity for foundations; conditions as to filled ground or old refuse dumps.)

(i) *Availability and adequacy of utilities.* (Water supply and character of the water available, including information from qualified engineers as to the adequacy of the supply mains and of the source of supply; sanitary sewage disposal provisions; storm water disposal; electric current supply, including proximity of adequate power lines; gas supply, including proximity and adequacy of the mains from which the supply must be taken.)

(j) *Community services.* (Disposal of garbage and refuse, including the method of disposal as affected by the site location; fire protection and the possible influence upon insurance rates; police protection, snow removal, street lighting, street tree planting and maintenance, and other municipal services as affected by site location.)

(k) *Relation to the thoroughfare system and condition of streets.* (Accessibility to the site by way of paved streets; condition and extent of present improvements on streets to remain open within, bounding, or leading to the site; position of the site in the general street or highway plan; relationship of the site to major thoroughfares; street or highway system as it may affect the safety of children going to schools or commercial centers; possibilities as to the closing of existing streets within the site.)

(l) *Possibility of later enlargement of the project.* (Future acquisition of suitable adjacent vacant or built-up land; adjacent barriers to future extension of the project.)

(m) *Cost of site and acquisition problems.* (Probable cost of land to be purchased; possibility of the donation of land; acquisition difficulties which may block or delay assemblage of the tract; existence of easements for underground or overhead utilities which may complicate site acquisition; inclusion within the site of historical landmarks or monuments; inclusion within the site of good homes, stores, churches, industrial plants, or other structures.)

(n) *Relocation problems.* (Racial aspect of the problem of relocating present residents of the site; relocation problem caused by the removal of present residents, in its relation to an existing housing shortage.)*† [Par. VI]

NATHAN STRAUS,
Administrator.

OCTOBER 30, 1939.

[F. R. Doc. 39-4214; Filed, November 14, 1939; 9:30 a. m.]

TITLE 26—INTERNAL REVENUE

BUREAU OF INTERNAL REVENUE

[T.D. 4953]

REGULATIONS 90, AS MADE APPLICABLE TO THE INTERNAL REVENUE CODE BY TREASURY DECISION 4885, FURTHER AMENDED

TAX FOR THE CALENDAR YEAR 1939 UNDER THE FEDERAL UNEMPLOYMENT TAX ACT

To Collectors of Internal Revenue and Others Concerned:

In order to prescribe regulations applicable to the excise tax on employers of eight or more for the calendar year 1939, imposed under the Federal Unemployment Tax Act (subchapter C of chapter 9 of the Internal Revenue Code), as amended by sections 608, 609, 610, 611, 612, 613, and 615 of the Social Security Act Amendments of 1939 (Public, No. 379, 76th Cong., 1st sess.), Regulations 90,[1] approved February 17, 1936 [Part 400, Title 26, Code of Federal Regulations], only as made applicable to the Internal Revenue Code by Treasury Decision 4885,[2] approved February 11, 1939 [Part 465, Subpart B, of such Title 26], as amended, are further amended as follows:

(1) Immediately preceding article 1 [section 400.1, Title 26, Code of Federal Regulations], only as made applicable to the Internal Revenue Code, the following is inserted:

SECTION 615 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939.

Subchapter C of chapter 9 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"SEC. 1611. This subchapter may be cited as the Federal Unemployment Tax Act."

(2) Article 1 [section 400.1, Title 26, Code of Federal Regulations], only as made applicable to the Internal Revenue Code, is amended by striking out paragraphs (*c*) and (*d*), and by adding at the end thereof the following new paragraphs:

"(*j*) The term 'Internal Revenue Code' means the Act entitled 'An Act To consolidate and codify the internal revenue laws of the United States', approved February 10, 1939 (53 Stat., Part 1), as amended.

"(*k*) The term 'Social Security Act Amendments of 1939' means the Act entitled 'An Act To amend the Social Security Act, and for other purposes,' approved August 10, 1939 (Public, No. 379, 76th Cong., 1st sess.).

"(*l*) The term 'Federal Unemployment Tax Act' means subchapter C of chapter 9 of the Internal Revenue Code, as amended by sections 608, 609, 610, 611, 612, 613, and 615 of the Social Security Act Amendments of 1939. Such subchapter C, as so amended, comprises sections 1600 to 1611, inclusive, of the Internal Revenue Code.

"(*m*) The term 'tax' means the excise tax on employers of eight or more imposed by section 1600 of the Federal Unemployment Tax Act.

"(*n*) The term 'taxable year' means the calendar year 1939."

(3) Immediately after article 1 [section 400.1, Title 26, Code of Federal Regulations], only as made applicable to the Internal Revenue Code, the following new article is inserted:

"ART. 2 [Sec. 400.2, Title 26, Code of Federal Regulations, 1939 Sup.]. *Scope of regulations for calendar year 1939.* (*a*) These regulations relate to the excise tax on employers of eight or more for the calendar year 1939 imposed under the Federal Unemployment Tax Act (subschapter C of chapter 9 of the Internal Revenue Code, which superseded Title IX of the Social Security Act with respect to the tax for such year and subsequent years), as amended by sections 608, 609, 610, 611, 612, 613, and 615 of the Social Security Act Amendments of 1939. The Federal Unemployment Tax Act, as so amended, comprises sections 1600 to 1611, inclusive, of the Internal Revenue Code. All provisions of, and references to, the Social Security Act or other laws of the United States which have been codified in the Federal Unemployment Tax Act or other portions of the Internal Revenue Code, but which remain in these regulations, shall be deemed to be, and shall be read as if they were, provisions of or references to the corresponding provisions of the Internal Revenue Code.

[1] 1 F.R. 3.
[2] 4 F.R. 879 DI.

"(b) These regulations also relate to services performed during the calendar year 1939 which constitute employment as defined in section 1607 (c) of the Federal Unemployment Tax Act in force prior to January 1, 1940. (See also section 13 (a) of the Railroad Unemployment Insurance Act, section 902 (f) of the Social Security Act Amendments of 1939, and section 2 of the Act of August 11, 1939 (Public, No. 400, 76th Cong., 1st sess.), relating, respectively, to the exemption from the tax of service performed on and after July 1, 1939, in the employ of an 'employer' or as an 'employee representative' as those terms are defined in the Railroad Unemployment Insurance Act, to the exemption from the tax of service performed prior to January 1, 1940, in the employ of foreign governments and certain of their instrumentalities, and to the exemption from the tax of certain service performed prior to such date in salvaging timber and clearing debris left by a hurricane; and see articles 206 (8), 206 (9), and 206 (10) [sections 400.206 (8), 400.206 (9), and 400.206 (10), Title 26, Code of Federal Regulations, 1939 Sup.], relating to such exemptions.

"(c) Section 614 of the Social Security Act Amendments of 1939 amends section 1607 of the Federal Unemployment Tax Act, containing definitions of terms used in such Act (for example, 'wages,' 'employment,' and 'agricultural labor'), but the changes in such definitions do not apply to services performed during the calendar year 1939. Thus, for example, whether particular services performed during 1939 constitute employment will be determined under the provisions of section 1607 (c) of the Federal Unemployment Tax Act in force prior to January 1, 1940 (see articles 206 (1) to 206 (7), inclusive [sections 400.206 (1) to 400.206 (7), inclusive, Title 26, Code of Federal Regulations]; and see also articles 206, 206 (8), 206 (9), and 206 (10) [sections 400.206, 400.206 (8), 400.206 (9), and 400.206 (10), Title 26, Code of Federal Regulations, 1939 Sup.]). As a further example, all remuneration (including amounts exceeding $3,000) paid to an employee by an employer during the calendar year 1939 for employment during such year is subject to the tax, since no limitation as to the amount taxable is contained in the definition of wages in section 1607 (b) of the Federal Unemployment Tax Act in force prior to January 1, 1940. (As to 'wages' for purposes of the tax for the year 1939, see articles 207 to 210, inclusive [sections 400.207 to 400.210, inclusive, of such Title 26, 1939 Sup.].)

"(d) New regulations will be promulgated under the Federal Unemployment Tax Act relating to the tax for the calendar year 1940 and subsequent years."

(4) The provisions of law under the caption "Section 901 of the Act" immediately preceding article 200 [section 400.200, Title 26, Code of Federal Regulations], only as made applicable to the Internal Revenue Code, are stricken out, together with the caption, and the following is inserted in lieu thereof:

SECTION 608 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939.

Section 1600 of the Internal Revenue Code is amended to read as follows:

"SEC. 1600. RATE OF TAX.

"Every employer (as defined in section 1607 (a)) shall pay for the calendar year 1939 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3 per centum of the total wages (as defined in section 1607 (b)) paid by him during the calendar year with respect to employment (as defined in section 1607 (c)) after December 31, 1938."

(5) Article 201 [section 400.201, Title 26, Code of Federal Regulations], only as made applicable to the Internal Revenue Code, is amended to read as follows:

"ART. 201 [Sec. 400.201, Title 26, Code of Federal Regulations, 1939 Sup.]. *Measure of tax for calendar year 1939.* (a) The measure of the tax for the calendar year 1939 is the total amount of wages (without limitation in amount—see article 2 (c) [section 400.2 (c), Title 26, Code of Federal Regulations, 1939 Sup.]) *paid* by an employer during such calendar year with respect to employment after December 31, 1938.

"(b) Wages are *paid* for purposes of the tax imposed for the calendar year 1939 when actually or constructively paid. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn at any time, and their payment brought within his own control and disposition."

(6) Article 202 [section 400.202, Title 26, Code of Federal Regulations], only as made applicable to the Internal Revenue Code, is amended to read as follows:

"ART. 202 [Sec. 400.202, Title 26, Code of Federal Regulations, 1939 Sup.]. *Rate and computation of tax for calendar year 1939.* The rate of tax applicable for the calendar year 1939 is 3 percent.

"The tax for the calendar year 1939 is computed by applying the 3 percent rate to the total wages (without limitation in amount—see article 2 (c) [section 400.2 (c), Title 26, Code of Federal Regulations, 1939 Sup.]) *paid* during such year by the employer with respect to employment after December 31, 1938."

(7) Article 203, as amended by Treasury Decision 4931, approved August 29, 1939 [section 400.203, Title 26, Code of Federal Regulations, 1939 Sup.], only as made applicable to the Internal Revenue Code, is amended by striking out the last paragraph and by inserting in lieu thereof the following:

"Even if an 'employer' is not subject to any State unemployment compensation law, he is nevertheless subject to the tax. However, if he is subject to such a State law, he is entitled to credit against the tax to the extent permitted by section 1601 of the Federal Unemployment Tax Act. (See articles 211 (1) and 212 [sections 400.211 (1) and 400.212, Title 26, Code of Federal Regulations, 1939 Sup.].)"

(8) Articles 206 and 208, as amended by Treasury Decision 4931,[3] approved August 29, 1939 [sections 400.206 and 400.208, Title 26, Code of Federal Regulations, 1939 Sup.] and articles 207, 210, and 302 [sections 400.207, 400.210, and 400.302 of such Title 26], only as made applicable to the Internal Revenue Code, are each amended by striking out the term "payable" wherever it appears and by inserting in lieu thereof the term "paid"; and such article 210 is further amended by striking out the word "actually" where it appears in paragraph (b) thereof.

(9) Article 209 (a) [section 400.209 (a), Title 26, Code of Federal Regulations], only as made applicable to the Internal Revenue Code, is amended to read as follows:

"(a) *General.* Wages paid during the calendar year 1939 with respect to employment after December 31, 1938, include items paid in money and the fair value, at the time of payment, of all items other than money."

(10) The provisions of law under the caption "Section 902 of the Act" preceding article 211, as amended by Treasury Decision 4812,[4] approved June 18, 1938 [section 400.211, Title 26, Code of Federal Regulations, 1938 Sup.], only as made applicable to the Internal Revenue Code, are stricken out, together with the caption, and the following is inserted in lieu thereof:

SECTION 609 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939.

Section 1601 of the Internal Revenue Code is amended to read as follows:

"SEC. 1601. CREDITS AGAINST TAX.

"(a) CONTRIBUTIONS TO STATE UNEMPLOYMENT FUNDS.

"(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 1600 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified for the taxable year as provided in section 1603.

"(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

"(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 1604 to file a return for such year; except that credit shall be permitted for

[3] 4 F.R. 3795 DI.
[4] 3 F.R. 1463 DI.

contributions paid after such last day but before July 1 next following such last day, but such credit shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day. The preceding provisions of this subdivision shall not apply to the credit against the tax of a taxpayer for any taxable year if such taxpayer's assets, at any time during the period from such last day for filing a return for such year to June 30 next following such last day, both dates inclusive, are in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

"(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 1604.

"(5) Refund of the tax (including penalty and interest collected with respect thereto, if any), based on any credit allowable under this section, may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund.

* * * * *

"(c) LIMIT ON TOTAL CREDITS. The total credits allowed to a taxpayer under this subchapter shall not exceed 90 per centum of the tax against which such credits are allowable."

(11) Article 211, as amended by Treasury Decision 4812, approved June 18, 1938 [section 400.211, Title 26, Code of Federal Regulations, 1938 Sup.], only as made applicable to the Internal Revenue Code, is stricken out and the following new article is inserted in lieu thereof:

"ART. 211 (1) [Sec. 400.211 (1), Title 26, Code of Federal Regulations, 1939 Sup.]. *Credit against tax for calendar year 1939 for contributions paid—(a) General.* Subject to the limitations hereinafter prescribed in paragraph (b), the taxpayer may credit against the tax for the calendar year 1939 the total amount of contributions paid by him under all State laws which have been found by the Social Security Board to contain the provisions specified in section 1603 (a) of the Federal Unemployment Tax Act; provided that no credit may be taken for a contribution under a State law if such State has not been duly certified for the calendar year to the Secretary by the Social Security Board. The contributions may be credited against the tax whether or not they are paid with respect to employment as defined in the Federal Unemployment Tax Act.

"(b) *Limitations on allowance of contributions as credit against tax.* The allowance of contributions as credit against the tax for the calendar year 1939 is subject to the following limitations:

(1) The total credit allowed to any taxpayer for contributions to State unemployment funds shall not exceed 90 percent of the tax against which such credit is applied.

(2) The contributions must have been actually paid into the State unemployment fund. Such payment must have been made on or before the last day upon which the return for the taxable year is required to be filed (see article 303 [section 400.303, Title 26, Code of Federal Regulations], article 304 [section 400.304, of such Title 26, 1939 Sup.], and article 305 [section 400.305, of such Title 26]), except that:

(i) Contributions may be paid into a State unemployment fund after such last day but before July 1, 1940, and, in such case, may be credited against the tax in an amount not to exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid into the State unemployment fund on or before such last day. (See examples A, B, and C of this paragraph.)

(ii) Contributions of a taxpayer whose assets, at any time during the period from such last day for filing a return for the calendar year 1939, to June 30, 1940, both dates inclusive, are in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction, may be paid into the State fund at any time (subject, however, to the provisions of article 503 [section 400.503, Title 26, Code of Federal Regulations] relating to the statutory period of limitations applicable to credits), and upon such payment may be credited against the tax in the same amount that would have been allowable as credit had the contributions been paid on or before the last day upon which the return for the taxable year was required to be filed.

(iii) Contributions for the calendar year 1939 paid into the unemployment fund of a State which are required under the unemployment compensation law of that State, but which are paid with respect to remuneration on the basis of which the taxpayer had, prior to such payment, erroneously paid an amount as contributions under another unemployment compensation law, shall be deemed for purposes of credit to have been paid at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions for the calendar year 1939 with respect to services subject to such other law, the payment into the proper fund shall be deemed for purposes of credit to have been made on the date the return for the calendar year 1939 was actually filed under section 1604 of the Federal Unemployment Tax Act. (See example D of this paragraph.)

(3) The contributions must have been paid with respect to the calendar year 1939. (See examples E and F of this paragraph.)

"Example A, illustrating article 211 (1) (b) (2) (i). The Federal return of the M Company for the calendar year 1939 discloses a total tax of $12,000. The company is liable for total State contributions of $8,000 for such year. The due date of the company's Federal return is January 31, 1940, no extension of time for filing the return having been granted. The contributions are not paid until February 1, 1940. If the contributions had been paid on or before January 31, 1940, the entire amount could have been credited against the tax (such amount not exceeding 90 percent of the Federal tax of $12,000). Since the contributions were paid after January 31, but before July 1, 1940, the M Company is entitled to a credit of 90 percent of the amount of the contributions ($8,000), or $7,200, the net liability for Federal tax being $4,800 ($12,000 minus $7,200).

"Example B, illustrating article 211 (1) (b) (2) (i). The facts are the same as in example A, except that the M Company is liable for and pays total State contributions of $12,000, instead of $8,000. If the contributions had been paid on or before January 31, 1940, the amount allowable as credit would have been $10,800 (90 percent of the Federal tax of $12,000). Since the contributions were paid after January 31, but before July 1, 1940, the M Company is entitled to a credit of 90 percent of $10,800, or $9,720, the net liability for Federal tax being $2,280 ($12,000 minus $9,720).

"Example C, illustrating article 211 (1) (b) (2) (i). The Federal return of the R Company for the calendar year 1939 discloses a total tax of $10,000. The company is liable for total State contributions of $9,000 for such year. The due date of the company's Federal return is January 31, 1940, no extension of time for filing the return having been granted. The R Company pays $8,000 of the total State contributions on or before such date, and the remaining $1,000 on February 1, 1940. If the $1,000 had been paid on or before January 31, 1940, that amount could have been credited against the tax (such amount plus the $8,000 paid on or before January 31, 1940, not exceeding 90 percent of the Federal tax of $10,000). Since the $1,000 was paid after January 31, but before July 1, 1940, the R Company is entitled to a credit of 90 percent of this amount or $900, plus the credit of $8,000 allowable for the contributions paid on or before January 31, 1940. The net liability for Federal tax is thus $1,100 ($10,000 minus $8,900).

"Example D, illustrating article 211 (1) (b) (2) (iii): Employer N, whose

Federal return for the calendar year 1939 discloses a total tax of $1,000, employs individuals in State X and State Y during the calendar year 1939. N assumes in good faith that the services of his employees are covered by the unemployment compensation law of State Y, and pays as contributions to State Y the amount of $900 based upon the remuneration of the employees. All of the services were in fact covered by the unemployment compensation law of State X, and none by the law of State Y. The payment to State Y was made on January 31, 1940. When the error was discovered thereafter, N paid to State X contributions in the amount of $900 based upon such remuneration. Since the contributions were paid to State Y on January 31, 1940, the contributions to State X are, for purposes of the credit, deemed to have been paid on such date. N is entitled to a credit of $900 against the Federal tax of $1,000, the net liability for Federal tax being $100 ($1,000 minus $900).

"Example E, illustrating article 211 (1) (b) (3): Under the unemployment compensation law of State X, employer M is required to report in his contribution return for the quarter ended December 31, 1939, all remuneration *payable* for services rendered in such quarter. A portion of such remuneration is not paid to his employees until February 1, 1940. On January 20, 1940, M pays to the State the total amount of contributions due with respect to all remuneration so required to be reported. Such contributions, including those with respect to the remuneration paid on February 1, 1940, may be included in computing the credit against the tax for the calendar year 1939. This is true even though the remuneration paid on February 1, 1940 (if it constitutes 'wages') is required to be reported in the Federal return for 1940 and not in the Federal return for 1939.

"Example F, illustrating article 211 (1) (b) (3): Under the unemployment compensation law of State Y, employer N is required to include in his contribution return for the quarter ended December 31, 1939, certain remuneration paid on December 30, 1939, to an employee for services to be rendered after December 31. On January 20, 1940, N pays to the State the total amount of contributions due with respect to all remuneration required to be reported on the contribution return. Such contributions, including those with respect to the remuneration paid on December 30, 1939, may be included in computing the credit against the tax for the calendar year 1939.

"(c) If, subsequent to the filing of the return for the calendar year 1939, a refund is made by a State to the taxpayer of any part of his contributions for such year which had been credited against the tax, the taxpayer is required to advise the Commissioner under oath of the date and amount of such refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest from the date when the tax was due."

(12) The provisions of law under the captions "Section 909 of the Act" and "Section 910 of the Act" immediately preceding article 212, as amended by Treasury Decision 4876,[5] approved November 30, 1938 [section 400.212, Title 26, Code of Federal Regulations, 1938 Sup.], only as made applicable to the Internal Revenue Code, are stricken out, together with the captions, and the following is inserted in lieu thereof:

SECTION 609 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939.

Section 1601 of the Internal Revenue Code is amended to read as follows:

"SEC. 1601. CREDITS AGAINST TAX.

* * * * *

"(b) ADDITIONAL CREDIT. In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 1600 for any taxable year an amount, with respect to the unemployment compensation law of each State certified for the taxable year as provided in section 1602 (or with respect to any provisions thereof so certified), equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in the taxable year to any person having individuals in his employ, or to a rate of 2.7 per centum, whichever rate is lower.

* * * * *"

(13) Article 212, as amended by Treasury Decision 4876, approved November 30, 1938 [section 400.212, Title 26, Code of Federal Regulations, 1938 Sup.], only as made applicable to the Internal Revenue Code, is amended to read as follows:

"ART. 212 [Sec. 400.212, Title 26, Code of Federal Regulations, 1939 Sup.]. *Additional credit against tax for calendar year 1939—(a) General.* In addition to the credit against the tax allowable under section 1601 (a) of the Federal Unemployment Tax Act for contributions actually paid to State unemployment funds (see article 211 (1) [section 400.211 (1), Title 26, Code of Federal Regulations, 1939 Sup.]), the taxpayer may be entitled to a further credit under section 1601 (b) of such Act. This further or *additional* credit is allowable to the taxpayer with respect to the amount of contributions which he is relieved from paying to an unemployment fund under the provisions of a State law which have been certified for the calendar year 1939 as provided in section 1602 (b) of such Act. Generally, an additional credit is available to an employer, if, by reason of having stabilized the employment of his employees in any State, or for some other reason, he is permitted to pay contributions to such State for the calendar year 1939, or portion thereof, at a lower rate than the highest rate applied under such law in such year. For the purposes of this article and article 213 [section 400.213, Title 26, Code of Federal Regulations, 1939 Sup.], the phrase 'highest rate applied' means the highest rate which is actually applied under the State law in the calendar year 1939 to any person having individuals in his employ. The computation of the additional credit and the limitations upon its allowance are set forth in the remaining paragraphs of this article.

"(b) *Method of computing amount of additional credit allowable with respect to a State law.* (1) In ascertaining the additional credit for the calendar year 1939 with respect to a particular State law as to which the Social Security Board, in accordance with the provisions of section 1602 (b) (1) of the Federal Unemployment Tax Act, certifies to the Secretary that reduced rates of contributions were allowable with respect to such year only in accordance with the provisions of section 1602 (a) of such Act, the taxpayer must first compute the following amounts:

"(A) The amount of contributions (whether or not with respect to employment as defined in the Federal Unemployment Tax Act) which the taxpayer would have been required to pay under the State law for such year if throughout the year he had been subjected to the highest rate applied under such law in such year, or to a rate of 2.7 percent, whichever rate is lower.

"(B) The amount of contributions (whether or not with respect to employment as defined in the Federal Unemployment Tax Act) he was required to pay under the State law with respect to such year, whether or not paid.

"The amount computed under (B) should then be subtracted from the amount computed under (A), and the result will be the additional credit for the taxable year with respect to the law of that State.

"Example: A employs individuals in State X only during the calendar year 1939. The highest rate applied in such year under the unemployment compensation law of State X to any taxpayer was 3 percent. However, A had obtained a reduced rate of 1 percent under the law of such State and was required to pay his entire year's contributions at that rate. The amount of remuneration of A's employees subject to contributions under such State law was $25,000. The amount of wages paid by A during that year with respect to employment under the Federal law likewise was $25,000, the Federal tax at the 3 percent rate being $750. A's additional credit under section 1601 (b) is $425, computed as follows:

Remuneration subject to contributions	$25,000
Contributions at 2.7 percent rate	675
Less:	
Contributions required to be paid at reduced rate of 1 percent	250
Additional credit to A	425

"Since the 2.7 percent rate is less than the highest rate applied (3 percent), the

[5] 3 F. R. 2863 DI.

2.7 percent rate is used in computing the amount ($675) from which the amount of contributions required to be paid at the reduced rate ($250) is deducted in order to ascertain the additional credit ($425). Thus, A is entitled to an additional credit under section 1601 (b) of the Federal Unemployment Tax Act of $425.

"(2) If the Social Security Board makes a certification to the Secretary with respect to a particular State law for the calendar year 1939 pursuant to section 1602 (b) (2) of the Federal Unemployment Tax Act, the additional credit of the taxpayer for such year with respect to such law shall be computed in such manner as the Commissioner shall determine.

"(c) *Amount of additional credit allowable where contributions are paid under more than one State law.* If the taxpayer is permitted to pay contributions at a reduced rate under more than one State law in the calendar year 1939, the additional credit allowable with respect to each State law shall be computed separately (in accordance with (b) above), and the total additional credit allowable against the tax shall be the aggregate of the additional credits allowable with respect to such State laws.

"(d) *Limitations on allowance of additional credit.* The allowance of the additional credit under section 1601 (b) of the Federal Unemployment Tax Act is subject to the following limitations:

"(1) In no case is a taxpayer entitled to an additional credit unless under the State law he is permitted to pay contributions for the calendar year 1939, or portion thereof, at a rate which is lower than the highest rate applied under such law in such year. If the State law does not make provision for such a lower rate no *additional* credit is available to the taxpayer and he can take only the credit allowable under section 1601 (a) of such Act for contributions actually paid. (See article 211 (1) [section 400.211 (1), Title 26, Code of Federal Regulations, 1939 Sup.].)

"(2) The aggregate of such additional credit and the credit under section 1601 (a) of such Act (see article 211 (1) [section 400.211 (1), Title 26, Code of Federal Regulations, 1939 Sup.]) shall not exceed 90 percent of the tax against which credit is taken.

"(3) No additional credit shall be allowed except to the extent that the State unemployment compensation law under which such reduced rate is permitted is certified for the calendar year 1939 to the Secretary by the Social Security Board as meeting the conditions set forth in section 1602 of such Act."

(14) Article 213, as added by Treasury Decision 4876, approved November 30, 1938 [section 400.213, Title 26, Code of Federal Regulations, 1938 Sup.], only as made applicable to the Internal Revenue Code, is amended to read as follows:

"ART. 213 [Sec. 400.213, title 26, Code of Federal Regulations, 1939 Sup.]. *Proof of credit for calendar year 1939—(a) Credit under section 1601 (a) of Federal Unemployment Tax Act.* Credit against the tax for contributions paid into State unemployment funds for the calendar year 1939 shall not be allowed unless there is submitted to the Commissioner:

"(1) A certificate of the proper officer of each State (the laws of which required the contributions to be paid) showing, for the taxpayer:

"(A) The total amount of contributions required under the State law with respect to the calendar year 1939 (exclusive of penalties and interest) actually paid on or before the date the Federal return is required to be filed; and

"(B) The amounts and dates of such required payments (exclusive of penalties and interest) actually paid after the date the Federal return is required to be filed.

"(2) An affidavit by the taxpayer that no part of any payment made by him into a State unemployment fund for the calendar year 1939, which is claimed as a credit against the tax, was deducted or is to be deducted from the wages of individuals in his employ.

"(3) Such other or additional proof as the Commissioner may deem necessary to establish the right to the credit provided for under section 1601 (a) of the Federal Unemployment Tax Act.

"(b) *Additional credit under section 1601 (b) of Federal Unemployment Tax Act.* Additional credit under section 1601 (b) of the Federal Unemployment Tax Act shall not be allowed unless there is submitted to the Commissioner, in addition to the proof required by paragraph (a) above:

"(1) A certificate of the proper officer of each State (with respect to the law of which the additional credit is claimed) showing, for the taxpayer who is permitted to pay contributions to such State at a rate which is lower than the highest rate applied under the law of such State:

"(A) The total remuneration with respect to which contributions were required to be paid by the taxpayer under the State law for the calendar year 1939;

"(B) The rate of contributions applied to the taxpayer under the State law for the calendar year 1939;

"(C) The total amount of contributions the taxpayer was required to pay under the State law with respect to the calendar year 1939, whether or not paid; and

"(D) The highest rate of contributions applied under the State law in the calendar year 1939 to any taxpayer having individuals in his employ.

"If under the law of such State different rates of contributions were applied to the taxpayer during particular periods of the calendar year 1939, the certificate shall set forth the information called for in (A), (B), and (C) with respect to each such period, as well as the total amount of contributions the taxpayer was required to pay under such law, whether or not paid, and the information called for in (D).

"(2) Such other or additional proof as the Commissioner may deem necessary to establish the right to the additional credit provided for under section 1601 (b) of the Federal Unemployment Tax Act."

(15) The following provisions of law under the caption "Section 905 (b) of the Act" preceding article 300, as amended by Treasury Decision 4931, approved August 29, 1939 [section 400.300, Title 26, Code of Federal Regulations, 1939 Sup.], only as made applicable to the Internal Revenue Code, are stricken out:

* * * The Commissioner may extend the time for filing the return of the tax imposed by this title, under such rules and regulations as he may prescribe with the approval of the Secretary of the Treasury, but no such extension shall be for more than sixty days. * * *

(16) Immediately preceding the caption "Section 1102 of the Revenue Act of 1926, made applicable by section 905 (b) of the Act" preceding article 300, as amended by Treasury Decision 4931, approved August 29, 1939 [section 400.300, Title 26, Code of Federal Regulations, 1939 Sup.], only as made applicable to the Internal Revenue Code, the following is inserted:

SECTION 612 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939.

Section 1604 (b) of the Internal Revenue Code is amended to read as follows:

"(b) EXTENSION OF TIME FOR FILING.—The Commissioner may extend the time for filing the return of the tax imposed by this subchapter, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than ninety days."

(17) Article 304 [section 400.304, Title 26, Code of Federal Regulations], only as made applicable to the Internal Revenue Code, is amended by striking out "60 days" where that phrase appears in the second sentence of such article, and by inserting in lieu thereof "90 days".

(18) Article 307 (a) [section 400.307 (a), Title 26, Code of Federal Regulations], only as made applicable to the Internal Revenue Code, is amended to read as follows:

"(a) Every person subject to the tax shall, with respect to the calendar year 1939, keep such permanent records as are necessary to establish:

"(1) The total amount of remuneration paid during the calendar year 1939 to his employees in cash or in a medium other than cash, showing separately, (a) total remuneration paid with respect to services not subject to the tax, performed within the United States, (b) total remuneration paid with respect to services performed outside of the United States, and (c) total remuneration paid with respect to all other services.

"(2) The amount of contributions paid by him into each State unemployment fund, with respect to services subject to the law of such State, showing separately (a) payments made and not deducted (or to be deducted) from the remuneration of employees, and (b) payments made and deducted (or to be deducted) from the remuneration of employees.

"(3) The information required to be shown on the prescribed return and the extent to which such person is liable for the tax."

(19) Immediately preceding article 504 [section 400.504, Title 26, Code of Federal Regulations], only as made applicable to the Internal Revenue Code, the following is inserted:

SECTION 609 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939.

Section 1601 of the Internal Revenue Code is amended to read as follows:

"SEC. 1601. CREDITS AGAINST TAX.

"(a) CONTRIBUTIONS TO STATE UNEMPLOYMENT FUNDS.—

* * * * *

"(5) Refund of the tax (including penalty and interest collected with respect thereto, if any), based on any credit allowable under this section, may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund.

* * * * *"

"ART. 503 5/6 [Sec. 400.503 5/6, Title 26, Code of Federal Regulations, 1939 Sup.] *Refund under section 1601 (a) (5) of Federal Unemployment Tax Act.* If the tax against which an amount is allowable as credit under section 1601 of the Federal Unemployment Tax Act has been paid without the benefit of such credit, the taxpayer shall be entitled to a refund of the tax equal to the amount of such allowable credit. (See articles 211 (1), 212, and 213 [sections 400.211 (1), 400.212, and 400.213, Title 26, Code of Federal Regulations, 1939 Sup.], relating, respectively, to credit against the tax for contributions paid, additional credit, and proof of credit, for the calendar year 1939.) The taxpayer shall also be entitled to a refund of the amount of interest or penalty, if any, collected from him with respect to the amount of tax refunded. No interest, however, shall be allowed or paid by the Government on the amount of any such refund. Every claim for such refund shall be made on Form 843 in accordance with the provisions of this article and article 503 [section 400.503, Title 26, Code of Federal Regulations], relating to refund and credit of taxes erroneously collected. A claim which does not comply with these requirements will not be considered for any purpose as a claim for refund."

(This Treasury Decision is issued under the authority contained in section 1609 of the Federal Unemployment Tax Act (subchapter C of chapter 9 of the Internal Revenue Code) (53 Stat., Part 1), and sections 608, 609, 612, and 615 of the Social Security Act Amendments of 1939 (Public, No. 379, 76th Cong., 1st sess.))

[SEAL] GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved, November 9, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

[F. R. Doc. 39-4215; Filed, November 14, 1939; 9:55 a. m.]

Notices

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. 512-FD]

IN THE MATTER OF THE APPLICATION OF MIDLAND ELECTRIC COAL CORPORATION FOR EXEMPTION

ORDER OF DISCONTINUANCE

An application dated February 7, 1938, pursuant to the provisions of the second paragraph of Section 4-A of the Bituminous Coal Act of 1937 having been filed by Midland Electric Coal Corporation (hereinafter referred to as the applicant) with the National Bituminous Coal Commission, which has been succeeded by the Bituminous Coal Division, for an order granting exemption from Section 4 of said Act of transactions in coal in intrastate commerce between the applicant and Hiram Walker & Sons, Inc., on the ground that such transactions do not directly affect interstate commerce in coal; and

Counsel for the applicant and counsel for the Bituminous Coal Division having entered into a stipulation dated November 7, 1939, to which District Board No. 10 has agreed, consenting to the withdrawal and discontinuance of the above application; and

Counsel for the applicant and counsel for the Bituminous Coal Division having consented to this Order;

It is ordered, That the above application for exemption be discontinued and that the above matter be dismissed subject to terms and conditions of said stipulation.

Dated, November 13, 1939.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 39-4211; Filed, November 13, 1939; 2:49 p. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW OF DETERMINATION GRANTING APPLICATION FOR PARTIAL EXEMPTION OF THE OPEN-CUT PLACER GOLD MINING INDUSTRY AS A SEASONAL INDUSTRY

Whereas application has been made by the Arctic Circle Exploration Company and sundry other parties under Section 7 (b) (3) of the Fair Labor Standards Act of 1938, and Regulations, Part 526, as amended (Regulations applicable to Industries of a Seasonal Nature), issued by the Administrator thereunder, for partial exemption of the open-cut placer gold mining industry from the maximum hours provisions of Section 7 (a) of said Act pursuant to Section 7 (b) (3) applicable to industries found by the Administrator to be of a seasonal nature; and

Whereas a public hearing on said application was held before Harold Stein, the representative of the Administrator of the Wage and Hour Division, duly authorized to take testimony, hear argument, and determine whether or not the open-cut placer gold mining industry or any subdivision thereof is an industry of a seasonal nature within the meaning of Section 7 (b) (3) of the Fair Labor Standards Act of 1938, and Part 526 of Regulations issued thereunder; and

Whereas, following such hearing, the said Harold Stein duly made his findings of fact and determined as follows:

"1. The open-cut mining of placer gold in the States of Idaho, Montana, Nevada, Oregon, South Dakota, Utah, Washington, and the Territory of Alaska, is a branch of the open-cut placer gold mining industry as defined in the Notice of Hearing; and

"2. The mining of placer gold from surface or open cuts in the above-defined area is characterized by annually recurrent cessation of operations caused by freezing temperatures and water shortage; and

"3. Except for maintenance, repair, and sales work the open-cut mining of placer gold in the above-defined area ceases completely at regularly recurring times of the year for a period of approximately six months or more in each part of the area, because due to climatic and other natural causes the materials used by the industry are not available in the form in which they are handled or processed; and

"4. The open-cut mining of placer gold in the above-defined area is a branch of an industry of a seasonal nature within the meaning of Section 7 (b) (3) of the Act and Part 526 of the Regulations issued thereunder.

"The application is granted.

"This determination is without prejudice to a determination on applications from other placer gold producing states and territories"; and

Whereas said Findings and Determination were duly filed with the Acting Administrator on November 10, 1939, and are now on file in Room 5144, Department of Labor Building, Washington, D. C., and available for examination by all interested parties:

Now, therefore, pursuant to the provisions of Section 526.7 of the aforesaid

Regulations, notice is hereby given that any person aggrieved by the said determination may, within fifteen days after the date this notice appears in the FEDERAL REGISTER, file a petition with the Acting Administrator requesting that he review the action of the said representative upon the record of hearing before the said representative.

Signed at Washington, D. C., this 14 day of November 1939.

HAROLD D. JACOBS,
Acting Administrator.

[F. R. Doc. 39-4219; Filed, November 14, 1939; 12:40 p. m.]

FEDERAL POWER COMMISSION.

[Docket Nos. G-114, G-125]

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, COMPLAINANT, V. NEW YORK STATE NATURAL GAS CORPORATION, DEFENDANT, AND IN THE MATTER OF NEW YORK STATE NATURAL GAS CORPORATION

ORDER POSTPONING DATE OF HEARING

NOVEMBER 10, 1939.

Commissioners: Clyde L. Seavey, Chairman; Claude L. Draper, Basil Manly, Leland Olds, John W. Scott.

It appearing to the Commission that:

(a) By order dated October 31, 1939,[1] the Commission directed that public hearing in the above entitled matters be held on November 20, 1939, at 10 o'clock a. m., in the offices of the Public Service Commission of the State of New York, 80 Centre Street, New York City, New York;

(b) On November 7, 1939, Counsel for the New York State Natural Gas Corporation filed a Petition requesting that the date for said public hearing be continued until December 12, 1939;

The Commission orders that:

The date of the public hearing in the above entitled matters be postponed until November 27, 1939, at the same hour and place set forth in paragraph (a) above.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 39-4213; Filed, November 14, 1939; 9:30 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 10th day of November 1939.

[1] 4 F.R. 4470 DI.

[File No. 1-2632]

IN THE MATTER OF FIDELITY FUND, INC., CAPITAL STOCK, $5 PAR VALUE

ORDER SETTING HEARING ON APPLICATION TO WITHDRAW FROM LISTING AND REGISTRATION

The Fidelity Fund, Inc., pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2-1 (b) promulgated thereunder, having made application to the Commission to withdraw its Capital Stock, $5 Par Value, from listing and registration on the Board of Trade of the City of Chicago; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

It is ordered, That the matter be set down for hearing at 10 A. M. on Wednesday, December 6, 1939, at the office of the Securities and Exchange Commission, 120 Broadway, New York City, and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

It is further ordered, That Adrian C. Humphreys, an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-4217; Filed, November 14, 1939; 11:14 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 10th day of November, A. D. 1939.

[File No. 47-47]

IN THE MATTER OF PEOPLES NATURAL GAS COMPANY

ORDER OF THE COMMISSION APPROVING APPLICATION

Peoples Natural Gas Company, a subsidiary of Northern Natural Gas Company, a registered holding company, having filed an application pursuant to Section 10 of the Public Utility Holding Company Act of 1935 for approval of the acquisition by it of certain utility assets constituting the gas plant and distribution system located at Spencer, Iowa, now owned by Skelgas Company, a subsidiary of Skelly Oil Company;

A public hearing having been held[1] upon said application, as amended, after appropriate notice, and the Commission having made its findings herein;

It is ordered, That said application be, and the same hereby is approved, subject to the following conditions:

(1) That said acquisition shall be in accordance with the terms of and as represented by said application, as amended; and

(2) That within ten days after such acquisition, the applicant shall file with this Commission a certificate of notification showing that such acquisition has been effected in accordance with such terms and representations.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-4216; Filed, November 14, 1939; 11:14 a. m.]

[1] 4 F.R. 4366 DI.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 13th day of November, 1939.

[File No. 1-2814]

IN THE MATTER OF CITY OF CORDOBA 7% EXTERNAL SINKING FUND GOLD BONDS OF 1927, DUE AUGUST 1, 1957 (UNSTAMPED)

ORDER SETTING HEARING ON APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

The New York Stock Exchange, pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2-1 (b) promulgated thereunder, having made application to strike from listing and registration the 7% External Sinking Fund Gold Bonds of 1927, due August 1, 1957 (Unstamped), of City of Cordoba; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

It is ordered, That the matter be set down for hearing at 10 A. M. on Friday, December 1, 1939, at the office of the Securities and Exchange Commission, 120 Broadway, New York City, and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

It is further ordered, That Adrain C. Humphreys, an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-4218; Filed, November 14, 1939; 11:14 a. m.]